the Oklahoma statute the acts complained of cannot sustain this action. *Collins* v. *Okla. State Hosp.* (Okla., 1919) 184 Pac. 946.

The real question here was whether the act of placing and keeping this woman in the negro ward could constitute a libel, for, as regarded the placing of the word "colored" after her name in the records, there was no evidence of same having come to the knowledge of any third person—no publication. It may be noted that this court decided, however, that to write of a white person that he was colored was libelous *per se;* see also on this point: *Flood* v. *News Courier Co.,* 71 S. C. 112; *Upton* v. *Times Dem. Co.,* 104 La. 141. The section of the Oklahoma laws in question is partially as follows: "Libel is a false or malicious unprivileged publication by writing, printing, picture or effigy or other fixed representation to the eye which exposes any person to public hatred, contempt, ridicule, or obloquy, or which tends to deprive him of public confidence, etc." By the rule of construction known as *"ejusdem generis"* the court held that the general term "or other fixed representation" only referred to things of the same kind or class enumerated by the particular words preceding — "writing, printing, picture or effigy," and that the acts in question here could not be included in this classification. A rather novel question is presented by the plaintiff's contention in this case. Probably, in view of the statute in this case, the decision is sound (though the interpretation seems rather technical); but, from a broader point of view, and in the absence of statutory provisions, it would seem that such a contention might well be made—that these acts might constitute a libel, a holding out to the world that this woman was a negro. Of course, the ordinary means of publishing a libel is by writing, etc., but, after all, it is the *seeing* by others of something defamatory to the party in question which is the gist of the offense, and this element is certainly present here. Libel is defined in NEWELL, SLANDER AND LIBEL, (3rd Ed.) p. 32, as "defamation published by means of writing, printing, pictures, images or anything that is the object of sight." Libel may be by effigy: *Johnson* v. *Com.,* 10 Sad. (Pa.) 514; in this case it is said: "no words whatever are essential to the constitution of the offense of libel;" also *Lortie* v. *Claude,* Queb. Off. Rep. 2 (S. C.) 369; and it is generally recognized that a picture may constitute a libel. From such it may be observed that the essence of the offense does not, of necessity, embody any writing, but would seem to consist in some impression being conveyed to the eye. While no case on facts really similar to the present has been found, it is at least worthy of consideration whether such case may not be brought within this principle.

MANDAMUS—DUTY OF HIGH SCHOOL TO ISSUE DIPLOMA.—A high school student who had satisfactorily completed the prescribed course of study, refused to wear a cap and gown at the graduating exercises on the ground that they were nauseating from fumigation and were apt to carry disease. The school authorities refused to issue her a diploma. *Held,* entitled to a writ of mandamus to compel the issuance of a diploma. It is not the graduating exercises but the completion of the course of study which entitles the student to a diploma. An implied legal duty rests on the public officers

of such school to issue a diploma to one who has finished such course of study. *Valentine* v. *Independent School District of Casey,* (Iowa, 1919), 174 N. W. 334.

The authorities on this question are meagre. A "graduate" has been defined as one who has honorably passed the prescribed course of study and has received a certificate to that effect. *Leopold* v. *United States,* 18 Ct. of Claims 46. The diploma is only evidence that the course has been completed and that the student is otherwise qualified according to the rules of the school. *Sweitzer* v. *Fisher,* 172 Ia. 266. According to the principal case a rule that the student participate in the graduation ceremony, at least in the dress prescribed, is not a reasonable requirement for graduation. But it is conceivable that where such a ceremonial is in the nature of a public test or demonstration of the student's knowledge and general fitness for graduation, participation therein may be as proper a requirement for a diploma as compliance with the rules of attendance, deportment, scholarship, etc. The point does not seem to have been decided. That a degree may be more than a certificate of attendance is shown in the case of *People ex. rel. O'Sullivan* v. *N. Y. Law School,* 68 Hun (N. Y.) 118, where the student had passed his final examinations but was refused a degree because of disgraceful conduct before the day of graduation. He was however given a certificate to the effect that he had completed the required course. The question in all these cases is whether the act which is sought to be enforced involves the exercise of discretion or judgment, in which case mandamus will not lie. *U. S.* v. *Seaman,* 17 How. (U. S.) 225. It would seem clear that in the case under discussion the court is right in deciding that there was no further discretion or judgment to be exercised by the school board, and that the rule that the student appear at the graduation ceremony in a particular costume was too arbitrary and unreasonable to be recognized. But if the act cannot be done without the exercise of discretion as where the student has failed to pass the required examination or otherwise complete the prescribed course, mandamus is not a proper remedy. *People ex. rel. Jones* v. *N. Y. Homoeopathic Med. Col. and Hospital,* 29 N. Y. Supp. 379. *Niles* v. *Orange Training School,* 63 N. J. L. 528. The cases are in conflict as to whether the duty, performance of which is sought, must be expressly enjoined by statute. By the weight of authority it may be either express or implied. *San Antonio St. RR. Co.* v. *State,* 90 Tex. 520. For collection of cases see 26 Cyc. 360. In the following cases a writ of mandamus was granted though it did not appear that the duty was imposed expressly by law: state superintendent refused to sign diploma of industrial school graduate who had completed all the requirements. *Hamlett* v. *Reid,* 165 Ky. 613; school board refused to issue certificate to teacher who had passed the examination with the required standing. *Northington* v. *Sublette,* 114 Ky. 75; school board refused to issue grammar grade teacher's certificate to one who had satisfactorily passed the examination. *Keller* v. *Hewitt,* 109 Cal. 148. In view of this state of the authorities the decision in the principal case seems to be sound.